requirements that normally would have applied to such plants during the months of September 1995 through February 1996 are eliminated by the suspension action.

The third provision included in the suspension removes the limits on the amount of milk that may be diverted to nonpool plants by a cooperative association or a pool plant operator for the period of September 1995 through February 1996.

The suspension was requested by Pennmarva Dairymen's Federation, Inc., Atlantic Processing, Inc., Dairylea, Inc., Milk Marketing, Inc., and Lehigh Valley Dairies. Together these organizations represent over 90 percent of the market's producer milk.

As proponents contended in their request, there is ample evidence to support this suspension action on the basis of the record of the May 3, 1994, hearing proceeding (DA–93–30) for the Middle Atlantic market. On July 10, 1995, a recommended decision in that proceeding, which dealt with the same pooling issues involved in this suspension, was issued and published on July 14, 1995, (60 F.R. 36239). The recommended changes would reduce the pooling standards for distributing plants and reserve processing plants and allow cooperatives and pool plant operators to divert more milk to nonpool plants. These changes were recommended primarily because the market's Class I use of producer milk has declined during the past several years.

Proponents stated that the market's supply/demand balance has deteriorated further since the hearing. In April 1995 only 37 percent of the market's producer milk was used in Class I compared with 41 percent in April last year, they indicated.

Since the amendatory relief resulting from the May 1994 hearing cannot be effective by September 1, 1995, when more stringent pooling standards take effect, it is necessary to suspend the aforementioned pooling provisions. The suspension will begin on September 1, 1995, and continue through February 29, 1996 or until such earlier time as the rulemaking proceeding (AO–160–A71;DA–93–30) may adopt proposed changes to the order.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon and thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk; and

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1004 are amended as follows effective September 1, 1995 through February 29, 1996:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1004.7 [Suspended in part]

2. In § 1004.7(a) introductory text, the words ''40 percent in the months of September through February, and'' and the words ''in the months of March through August,'' are suspended.

3. In § 1004.7(e) introductory text, the word ''immediately'' and the words ''for each of the following months of March through August,'' are suspended.

§ 1004.12 [Suspended in part]

4. In the introductory text of § 1004.12(d), the words ''in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section'' are suspended.

5. In § 1004.12, paragraphs (d)(1) and (d)(2) are suspended.

Dated: August 17, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–20967 Filed 8–23–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 242 and 299

[INS No. 1672–94; AG Order No. 1984–95]

RIN 1115–AD76

Administrative Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes administrative deportation procedures for aliens not admitted for permanent residence and not statutorily eligible for any relief from deportation who have been convicted of aggravated felonies. This regulation is being promulgated to implement the statutory measure eliminating the requirement for a hearing before an Immigration Judge and limiting judicial review. While incorporating procedural safeguards, it will expedite the deportation process in certain cases involving aliens who have committed serious criminal offenses.

EFFECTIVE DATE: This rule is effective September 25, 1995.

FOR FURTHER INFORMATION CONTACT: Leonard C. Loveless, Detention and Deportation Officer, Immigration and Naturalization Service, 425 Street, NW., Washington, D.C. 20536, Telephone (202) 514–2865.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (''the Service'') published a proposed rule on March 30, 1995, at 60 FR 16386. This final rule, which incorporates changes based on the comments received on the proposed rule, establishes an expedited administrative deportation procedure for aliens who have committed aggravated felonies and who are not lawful permanent residents. Congress authorized such a procedure in section 130004 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, which amended section 242A of the Immigration and Nationality Act (''the Act''), effective September 14, 1994. (The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, enacted October 25, 1994, made minor technical changes to section 242A.) Section 242A(b)(4) of the Act authorizes the Attorney General to implement an expedited deportation procedure that eliminates hearings before Immigration Judges for certain aliens convicted of serious criminal

offenses. Section 242A(b)(3) provides that aliens subject to this administrative deportation procedure shall be entitled to limited judicial review upon filing of a petition for review within 30 days after a Final Administrative Deportation Order is issued.

Before enactment of Public Law 103–322, all deportation and exclusion proceedings were required to be conducted before an Immigration Judge pursuant to section 242(b) of the Act (except in the case of certain security-related cases, Visa Waiver nonimmigrants, stowaways, and crewman violators). By enactment of Public Law 103–322, Congress authorized a more streamlined deportation process for aliens who have been convicted of aggravated felonies and who are not lawful permanent residents. Section 242A(b)(4) requires the Attorney General to prescribe regulations for such expedited proceedings. This final rule authorizes district director or chief patrol agent to issue a Final Administrative Order of Deportation in accordance with section 242A(b) of the Act. Under section 242A(b)(2)(B), the administrative procedure can be used only if an alien does not satisfy the statutory conditions that would make the alien eligible for possible relief from deportation under the provisions of the Act.

The final rule requires the Service to afford aliens certain procedural protections during the administrative deportation process:

a. An alien will be given reasonable notice of the charge of deportability on Form I–851, Notice of Intent to Issue a Final Administrative Deportation Order. The Notice must set forth allegations of fact and conclusions of law establishing that the alien is not a lawful permanent resident, is deportable under section 241 (a)(2)(A)(iii) of the Act (relating to conviction for an aggravated felony), and is not statutorily eligible for relief from deportation.

b. The charge of deportability must be supported by clear, convincing, and unequivocal evidence.

c. An alien will be afforded the opportunity to be represented by counsel in the deportation proceedings at no expense to the Government and will be provided a list of available free legal services.

d. An alien will be afforded a reasonable opportunity to inspect the evidence supporting the charge, and to rebut the charge within 10 days, with an extension granted by the district director or chief patrol agent for good cause shown

e. The person who renders the final decision will not be the same person who issues the charge.

f. A record of the proceedings must be maintained for judicial review.

g. An alien is able to seek review of the final order by filing a petition for judicial review within 30 days.

The Service cannot take action to commence the administrative deportation proceedings unless there is evidence establishing the statutory preconditions for deportation. If an alien appears to be statutorily eligible for relief from deportation, the Service will not commence proceedings under section 242A(b) of the Act.

An alien may obtain judicial review of a Final Administrative Deportation Order by filing a petition for review in accordance with section 106 of the Act. Such review, however, is limited under section 106(d) to: (1) Whether the person is in fact the alien described in the order; (2) whether the person was not lawfully admitted for permanent residence at the time at which deportation proceedings commenced; (3) whether the person is not eligible for any relief from deportation; (4) whether the alien has been convicted of an aggravated felony and such conviction has become final; and (5) whether the alien was afforded the procedures required by section 242A(b)(4) of the Act.

Section 242(a)(2) of the Act requires the Service to take into custody any alien who has been convicted of an aggravated felony, upon the alien's release from incarceration. An alien who has been lawfully admitted may be released from the Service's custody if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceedings. The Attorney General may not release from custody any alien who has not been lawfully admitted. An alien can seek review of a custody determination by filing a writ of habeas corpus with the district court.

The final rule differs from the proposed rule in the following respects: The rule amends 8 CFR 242.25(b)(2) by adding subparagraph (iii) to require the Service to provide a list of free legal-aid services to an alien in conjunction with the Notice of Intent. The final rule also amends 8 CFR 242.25(b)(2) by adding subparagraph (iv) to require the Service either to provide the alien a written translation of the Notice of Intent or to explain the contents of the Notice of Intent in the alien's native language or in a language the alien understands. The final rule also amends 8 CFR 299.1 by adding the entries for Forms I–851 (Notice of Intent to Issue a Final Administrative Deportation Order) and I–851A (Final Administrative Deportation Order) to the listing of forms, to ensure that Service personnel and the public are aware of these new forms and their proper edition dates. The rule also makes non-substantive changes to the provisions of the proposed rule for clarification.

In response to the proposed rule, the Service received several comment letters and memoranda of law from various independent attorneys, law enforcement officials, and legal defense organizations. The following sections summarize the comments and explain the revisions adopted.

The comments principally focused upon the following topics: aliens' entitlement to due process; the absence of an ''in person'' hearing in the administrative deportation procedure; the competence of the deciding Service officer; the complexity of determining whether an alien has been convicted of an ''aggravated felony'' or is entitled to relief from deportation; the form and content of the notice provided to the alien; the deadlines imposed upon the alien for responding to the Notice of Intent; aliens' opportunity to obtain counsel; aliens' opportunity to rebut charges; the impartiality of the deciding Service officer; the risk of deportation of United States citizens or lawful permanent residents; the lack of review of the deciding Service officer's decision by an Immigration Judge or by the Service's General Counsel; and the termination without prejudice of Immigration Judge proceedings when it appears that an alien is subject to administrative proceedings under section 242A(b) of the Act.

1. Procedural Due Process in the Absence of an In-Person Hearing

Comments: Several commenters contended that the proposed rule violated constitutional requirements of procedural due process. In particular, the commenters argued that the process is constitutionally inadequate because of the failure to provide an in-person hearing before the deciding Service officer.

Response and Disposition: Congress decided to permit expedited deportation procedures for a certain class of aliens with respect to whom the decision to deport typically is straightforward and not subject to discretionary or equitable considerations. Because deportation of such aliens involves no discretionary factors, and because there rarely will be any factual disputes bearing upon deportability that cannot be resolved

through documentary evidence, a testimonial hearing for such aliens rarely if ever will serve a useful purpose. Accordingly, Congress authorized the ''[e]limination of [a]dministrative [h]earing[s]'' for such aliens. Public Law 103–322, Section 130004(a), 108 Stat. 2026. The Service is merely implementing this congressional decision. Both the statute and the rule provide all the process that is due.

It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. *See Reno* v. *Flores,* 113 S. Ct. 1439, 1449 (1993). As the Supreme Court explained in *Landon* v. *Plasencia,* 459 U.S. 21, 34 (1982), whether deportation procedures satisfy due process depends upon three factors: (i) The interest at stake for the alien; (ii) the risk of an erroneous deprivation of the interest through the procedures used and the probable value of additional or different procedural safeguards; and (iii) the interest of the government in using the given procedures rather than additional or different procedures. As these three factors suggest, the constitutional sufficiency of procedures provided in any particular situation is dependent on context; it will vary with the particular circumstances, and what is sufficient for one type of deportation determination may not be sufficient for another. *Landon,* 459 U.S. at 34–35. In the context of deportation of aliens who are aggravated felons and who are not lawful permanent residents, consideration of the three factors compels the conclusion that the procedures provided in this rule satisfy due process.

With respect to the first factor, the Service recognizes that the interest at stake for the alien—remaining in the United States—can be substantial. An alien stands to lose the right ''to stay and live and work in this land of freedom,'' *Landon,* 459 U.S. at 34, and may lose the right to rejoin his or her immediate family, *id.* However, the aliens covered by this rule have somewhat lesser cognizable interests than aliens who are either permanent lawful residents, or who are not aggravated felons, or both. The aliens in question, because they will either have been admitted on a temporary basis or will have entered the country unlawfully, will not have ''develop[ed] * * * ties'' to the United States, see *Landon,* 459 U.S. at 32, equivalent to those enjoyed by permanent resident aliens. Moreover, this discrete class of aliens has demonstrated a disregard for the laws of the United States, as evidenced by their aggravated felony convictions. Those aliens who have been incarcerated will already have had their ties to this country diminished as a result; and even aliens who originally had been lawfully admitted should have less of an expectation to those ties because, by virtue of their commission of an aggravated felony, they will have failed to fulfill the conditions under which they gained entry and under which they were entitled to developed such ties.

As to the third factor in the due process calculation, the government's interest in ensuring expedited deportation of this class of aliens is substantial. To begin with, it ''weighs heavily in the balance'' that control of immigration matters ''is a sovereign prerogative.'' *Landon,* 459 U.S. at 34. In addition, the government also has a ''weighty'' interest ''in efficient administration of the immigration laws.'' *Id.* Considerable weight must be given to ''the administrative burden and other societal costs that would be associated with requiring * * * an evidentiary hearing upon demand in all cases.'' *Mathews* v. *Eldridge,* 424 U.S. 319, 347 (1976).

With regard to ''the administrative burden,'' the interest of the government and the public ''in conserving scarce fiscal and administrative resources'' is critical. *Mathews,* 424 U.S. at 348. The administrative process encouraged by Congress and established by this rule addresses Congress' concern that aliens who are serious criminal offenders have not heretofore been deported swiftly. Presently, without the expedited proceedings provided by this rule, many of these aliens, particularly those who serve short sentences for their convictions, remain in the custody of the Service for prolonged periods. Congress recognized that the present hearing procedure, with its ''repeated appeals,'' ''can consume several years.'' 139 Cong. Rec. E749 (Mar. 24, 1993) (statement of Rep. McCollum). The cost of incarcerating these aliens during that period is substantial, and Congress authorized the expedited deportation procedures in large part to ameliorate that cost. *Id.* See also 140 Cong. Rec. S3068 (Mar. 16, 1994) (statement of Sen. Roth). The expedited procedure also serves to address ''other societal costs.'' *Mathews,* 424 U.S. at 347. Because aliens presently can invoke the more formal procedures, their custody continues for an extended period. This exacerbates the ''problem of limited detention capacity'' that the Service faces, 139 Cong. Rec. E749 (Mar. 24, 1993) (statement of Rep. McCollum), and permits alien felons extended opportunity to commit further crime in this country. See 140 Cong. Rec. S3068 (Mar. 16, 1994) (statement of Sen. Roth).

Finally, with respect to the second due process factor, there is little risk that the administrative procedures established by this rule—in particular, the lack of an in-person hearing—will result in an erroneous deprivation of aliens' interests, and the probable value of additional or different procedural safeguards is minimal, at best.

It is worth noting, as an initial matter, that a number of aliens who are aggravated felons and who are not lawful permanent residents may choose not to contest deportation, since such deportation is based on objective, nondiscretionary criteria for aliens who fall within the class covered by section 242A of the Act.

Some aliens will, however, challenge deportation under section 242A of the Act; and due process requires that in any deportation proceeding, an alien must be entitled to notice of the nature of the charge and ''a fair opportunity to be heard'' on the charge. *Kwong Hai Chew* v. *Colding,* 344 U.S. 590, 597–98 (1953). As in other contexts, ''[t]he fundamental requirement of due process'' in a deportation proceeding ''is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' '' *Mathews,* 424 U.S. at 333 (citation omitted). See, *e.g., Rafeedie* v. *INS,* 880 F.2d 506, 524 (D.C. Cir. 1989). An alien must, therefore, be apprised of clearly defined charges, have a fair opportunity to present evidence in his or her favor, and have the right to inspect the evidence on which the matter is to be decided. See, *e.g., Kaczmarczyk* v. *INS,* 933 F.2d 588, 595–96 (7th Cir.), *cert. denied,* 502 U.S. 981 (1991). Due process in the deportation context does not, however, require the same procedural protections as would be provided in a criminal trial, see *Dor* v. *District Director,* 891 F.2d 997, 1003 (2d Cir. 1989), nor does it automatically dictate and opportunity for an alien to be heard upon a regular, set occasion, and according to the forms of judicial procedure; instead, due process merely requires that an alien be given an opportunity to be heard ''that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case.'' *Yamataya* v. *Fisher,* 189 U.S. 86, 101 (1903).

An alien's due process rights to be heard and to defend are protected by this rule. An alien will have been questioned by an immigration officer, and will be given reasonable notice of the charges, the right to counsel, and a reasonable opportunity to inspect the evidence and rebut the charges. An

alien can submit whatever evidence he or she wishes to rebut the charges, and the deportation decision will be made by an immigration official other than the official who issues the charging document. The burden of proof is upon the Service to establish deportability by clear, convincing, and unequivocal evidence. The decision is subject to judicial review by the court of appeals on a petition for review.

The fact that an in-person hearing before the deciding Service officer typically will be unavailable under the administrative proceedings does not automatically result in a denial of due process. To begin with, in the usual case the alien will already have had a face-to-face interview, when the Service takes into custody or otherwise first encounters the alien. During such an interview, the investigative officer may take a sworn statement or affidavit from the alien and then complete Form I–213, Record of Deportable Alien. See 8 U.S.C. 1357(b); 8 CFR 287.5(a). The results of this interview typically will form a basis for both the initiation of administrative deportation proceedings and the charge of deportability; thus, the alien has an opportunity at that initial interview to rebut the facts upon which administrative deportation would be predicated. Little, if anything, would be gained by requiring another interview before the deciding Service officer. And, since many aliens in administrative deportation proceedings will be detained by other law enforcement agencies, a requirement of another ''in-person'' hearing would result in further delays by requiring Service officers to travel to remote locations to repeat the interview with each alien.

Even more significantly, in a deportation proceeding under this rule the risk of making an erroneous decision will be minimal, and the value of an in-person hearing would be speculative at best. The only issues to be decided in such proceedings are ''relatively straightforward matters,'' *Califano* v. *Yamasaki,* 442 U.S. 682, 696 (1979), namely: alienage, lawful permanent resident status, conviction of an aggravated felony, and statutory eligibility for relief. The Service can determine alienage, lawful permanent resident status, and eligibility for relief based solely upon documentary evidence, such as information contained in the alien registration file and computer databases, and can supplement that evidence with the statement of the alien at the initial interview. The Service can determine whether the alien has been convicted of an aggravated felony based upon the record of conviction. Most importantly, unlike many determinations that can arise in other types of deportation proceedings, these determinations must be made by the Service without consideration of any equities or discretionary factors. Accordingly, there are unlikely to be any ''issues of witness credibility and veracity,'' *Mathews,* 424 U.S. at 343–44, that might justify an in-person, testimonial hearing.

The Supreme Court has held that due process does not require an in-person, testimonial hearing in front of the deciding official where the decision in question ''will turn, in most cases, upon 'routine, standard, and unbiased' '' documentary evidence. *Mathews,* 424 U.S. at 344 (citation omitted). Where the facts on which the ultimate decision are to be based are ''sharply focused and easily documented,'' *id.* at 343, as in the case of aliens who have committed aggravated felonies and who are not permanent resident aliens, more formal testimonial hearings are not constitutionally required. The facts on which deportation will depend for these aliens are ''relatively straightforward matters,'' *Califano,* 442 U.S. at 696, and are ''typically more amenable to written than to oral presentation,'' *Mathews,* 424 U.S. at 345. See also *id.* at 344 n.28.

Several commenters suggested that there may be certain cases in which testimony will be necessary to determine such issues as alienage or possible statutory eligibility for relief from deportation. Because of the nature of these determinations, the Service believes that the cases will be few and far between in which such determinations cannot be made on the basis of documentary evidence. But even if there are such isolated cases, that would not mean that the rule itself is unconstitutional.

To begin with, although the regulation does not require an in-person hearing, the deciding Service officer can request further evidence after the alien's initial submission, if that officer determines that such evidence will aid in the decision. Under 8 CFR 242.25(d)(2)(ii), if the deciding Service officer finds that the alien's written response raises a genuine issue of material fact regarding the preliminary findings, the officer may request additional evidence, as he or she may deem appropriate. Thus, if any testimony is required, it can and should be heard.

More fundamentally, ''procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions.'' *Mathews,* 424 U.S. at 344. And ''[i]t would be inconsistent with that principle to require a hearing * * * when review of [an alien's] written submission is an adequate means of resolving all but a few * * * disputes.'' *Califano,* 442 U.S. at 696. If an alien believes that due process requires additional protections because of the particular exigencies of his or her case, the alien can raise the issue in the record of proceedings, and the alien thereafter can, in appropriate circumstances, seek judicial review to redress any alleged constitutional deprivation. But the mere possibility of such as-applied due process challenges does not justify the enormous cost that would be entailed in providing an in-person hearing for every deportation determination. See *Mathews,* 424 U.S. at 909; *Califano,* 442 U.S. at 696. Therefore, the rule is not susceptible to a ''facial challenge'' on procedural due process grounds. *Cf. Reno* v. *Flores,* 113 S. Ct. at 1450–51 (because due process would not be denied in the majority of cases, facial due process challenge is rejected).

Accordingly, the provisions of the proposed rule requiring a documentary record and not requiring an in-person hearing have been adopted without substantive amendment in the final rule.

2. Reasonable Notice

Comments: Several commenters stated that the Notice provided to the alien pursuant to 8 CFR 242.25(b)(2) should advise the alien of eligibility for relief, be translated into the alien's native language if he or she is not proficient in English, and be explained to the alien. Other commenters stated that aliens often do not understand that nature of the proceedings; that aliens may be incompetent or mentally ill; and that proper notice should include more information regarding the law and legal rights. One comment stated that if the alien receives the Notice while detained, the regulation should provide that the alien be given writing materials and postage stamps for a response.

Response and Disposition: In conformity with the statute and the final rule, the Notice of Intent to Issue a Final Administrative Deportation Order (Form I–851) will contain legally sufficient factual allegations, conclusions of law, charge of deportability, and advice to the respondent (similar to an Order to Show Cause). These elements of notice satisfy due process requirements. The Notice will instruct the alien to identify which findings supporting deportation he or she is challenging, if any, and to corroborate any challenge with documentation or other evidence. To facilitate the process, page two of the Notice of Intent also will provide easy-to-understand boxes that an alien

should check to indicate the nature of the alien's response. It would be inappropriate for the regulation to recommend which kinds of evidence an alien should choose to present in defending against the charge or in presenting a claim to relief, given the variety of evidence that might be germane to the determinations at issue.

Both the Act and the regulations set forth the various forms of relief that may or may not be available in deportation proceedings. Moreover, under the rule, aliens will have a reasonable opportunity to obtain counsel of their choosing who may assist them in determining whether relief is available. If an alien submits evidence supporting a prima facie claim that he or she may be statutorily eligible for some relief from deportation, § 242.25(d)(2)(iii) of the rule requires the Service to terminate the administrative proceedings and, where appropriate, to initiate proceedings before an Immigration Judge. If an alien appears to satisfy the statutory conditions for eligibility for relief from deportation, the Service would not then have jurisdiction to commence or to continue proceedings under 242A(b) of the Act. In light of these protections, the proposed rule will not be changed to require that the Service advise the alien of the various forms of statutory eligibility for relief.

The Form I–851 (Notice of Intent) will advise respondent aliens of the availability of a list of free legal services. The rule is amended to require the Service to provide such a legal aid list in conjunction with the Notice of Intent. Service of the Notice must, in accordance with 8 CFR 292.5(a), be made upon an attorney or representative of record, if the alien is so represented. The Notice of Intent will clearly provide the address to which the alien must send a response.

The Service agrees that it is important that the alien understand the Notice of Intent. Therefore, to enhance fairness and ensure that the notice of the charges is reasonable, the proposed rule is amended to add subparagraph (iv) to 8 CFR 242.25(b)(2), which will require that the Service either provide the alien a written translation of the Notice of Intent or explain the contents of the Notice of Intent in the alien's native language or in a language that the alien understands.

The Service agrees that, in certain particular cases, an alien may be unable to read or understand the nature of proceedings because of his or her incompetence or mental illness. This rule provides a reasonable opportunity for an alien to seek the services of counsel, a relative, or friend. Providing further protections in a particular proceeding where circumstances warrant such protections will be the responsibility of the deciding Service officer, who may, for example, schedule an interview, where appropriate. The Service officer's decision on what, if any, additional notice and/or procedure to provide the alien will be subject to judicial review. The possibility that the Notice of Intent might not suffice to provide constitutionally adequate notice in rare circumstances does not suffice to call into question the constitutionality of the rule itself, which will provide constitutionally sufficient notice in the vast majority of cases. See *Mathews,* 424 U.S. at 909; *Califano,* 442 U.S. at 696.

3. Fair Opportunity To Respond to the Notice and To Inspect and Rebut the Evidence Supporting Deportation

Comments: Several commenters stated that the proposed rule would not provide sufficient time for an alien to respond to the Notice, and suggested that the response period be changed to one month. Commenters state that respondents who are incompetent, mentally ill, or who do not understand the nature of the proceedings, may need more time to obtain counsel and to rebut the charge. The comments outlined the numerous obstacles that detained aliens may face, such as: language impediments; mail delays; an inability to communicate with family, attorneys, and potential witnesses; lack of access to law libraries or writing materials; and difficulty in producing affidavits, identification documents, or birth records. One commenter stated that requiring the response to be supported by an affidavit is unnecessary because the regulation can provide that any response shall be considered to be made under oath. Finally, some commenters stated that the record of proceeding should be provided automatically to all aliens, rather than only upon an alien's request.

Response and Disposition: The Service believes that the proposed rule provides a fair opportunity for aliens to inspect evidence and rebut charges of deportability. Pursuant to 8 CFR 242.25(c)(2), ''[i]f an alien's written response requests the opportunity to review the Government's evidence, the Service shall serve the alien with a copy of the evidence in the record of proceeding upon which the Service is relying to support the charge.'' The alien then has ten additional days following service of the Government's evidence (thirteen days if service is by mail), to furnish a final response in accordance with 8 CFR 242.25(c) (1)–(2). Pursuant to 8 CFR 242.25(d)(2)(ii)(B), if, after the alien's rebuttal of the Notice, the deciding Service officer considers additional evidence from a source other than the alien, that evidence will also be provided to the alien and still another extension of time to respond shall be given. Thus, these regulations already provide respondents ample opportunity to inspect all evidence relied upon by the Government and contained in the record of proceeding.

The Service believes that any further increase in the time periods for response would contravene Congress' intent that the Service expeditiously adjudicate the deportation cases of the serious criminal offenders described under section 242A(b) of the Act. Many aliens in this class, particularly in county and local jails, are inmates who are incarcerated less than a year, and frequently less than six months. Expeditious proceedings under section 242A(b) of the Act will prevent ''spillover'' detention of these short-term inmates into the Service's detention, thereby relieving the aliens of further incarceration while saving substantial costs to the Service and to the public. Nonetheless, if an alien makes a timely written request for more time and explains the reasons for doing so—for instance, that the alien needs to contact family members or potential witnesses—the deciding Service officer may grant an extension for the alien to file a response under 8 CFR 242.25(c)(1). The deciding Service officer must ensure fairness in the adjudicative process. Accordingly, the Service believes that this rule provides sufficient opportunity for aliens to respond to the Notice.

The Service believes that the requirement that the alien request access to the evidence in order to receive it is constitutional and salutary. As explained above, it is unlikely that the majority of aliens covered by the administrative proceedings will contest their deportability. This fact counsels against expending the considerable cost and burden of sending all evidence to all aliens in the first instance. Those aliens who do wish to contest deportation readily can receive the evidence upon a simple request. Moreover, section 291 of the Act expressly provides that in presenting proof of time, manner, and place of entry into the United States, the alien ''shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records * * * pertaining to such entry in the custody of the Service.'' The Service must therefore produce any such documents that are in its possession in accordance with that section of the Act.

The Service agrees that an alien should not be required to submit an accompanying affidavit with his or her response. It is incumbent upon the alien to choose his or her own corroborating evidence in rebutting a charge. Accordingly, § 242.25(c)(2) has been modified to provide that the alien should submit with the response ''affidavit(s), documentary evidence, or other specific evidence supporting the challenge.''

4. Impartial Fact-Finder

Comments: Several commenters stated that the rule was unfair or unconstitutional because it will permit the issuing Service officer and the deciding Service officer both to be enforcement officials who may be agents of the same party, such as a District Director. One commenter recommended that the rule should explicitly prohibit the deciding Service officer from engaging in ex parte communication with the issuing Service officer or otherwise considering evidence outside the record, because due process requires that the decisionmaker make an independent evaluation and consider only evidence on the record that the alien has had a fair opportunity to rebut. Another commenter urged that the initiation of proceedings under the rule be subject to review by the Service's General Counsel, and another expressed concern that the rule does not provide adequate checks against Service misconduct.

Response and Disposition: Congress has provided for administrative deportation proceedings to be conducted without a hearing before an Immigration Judge. The officers of the Service are in the best position to perform such proceedings. The statute mandates that the Final Administrative Deportation Order not be issued by the same person who issues the Notice of Intent, and the rule reflects this protection.

The Service believes that the rule reasonably ensures that decisions are made by an impartial fact-finder. In order to prevent any ''blurring'' of investigative and adjudicative functions, the statute and the rule expressly forbid the ''deciding'' officer from being the same person who issues the charging document. It has been clear for at least 40 years that due process is not violated in deportation proceedings simply because the deciding official is subject to the control of officials charged with investigative and prosecuting functions. *Marcello* v. *Bonds*, 349 U.S. 302, 311 (1955).

Since the Service's attorney work force is available to provide legal advice to Service personnel, there is no need in the regulation to require General Counsel review of administrative proceedings.

The deciding Service officer is authorized under 8 CFR 242.25(d) to issue an order of deportation only if the ''evidence in the record of proceeding'' establishing deportability is clear, convincing and unequivocal. Thus, that officer is duty-bound to make an independent evaluation only of the evidence contained in the four corners of the record of proceeding, and may not rely upon evidence outside the record of proceeding. In addition, since the deciding Service officer is not authorized to make discretionary determinations on eligibility for relief in section 242A(b) proceedings, he or she may not consider any discretionary factors. Accordingly, the proposed rule has not been modified.

5. Termination of Immigration Judge Proceedings Without Prejudice to the Service

Comment: The proposed rule provides that the Service may request that proceedings before an Immigration Judge be terminated so that administrative deportation proceedings may be initiated. One commenter stated that if the Government moves to terminate an Immigration Judge proceeding commenced under section 242(b) of the Act, such termination should be with prejudice to the Service because the Service should not be allowed to ''forum shop'' and reinstate the deportation process in a setting where the alien has fewer procedural protections.

Response and Disposition: The Service may initiate or continue proceedings under this rule only if there is no evidence that an alien is prima facie eligible for relief. Thus, for example, if after a Notice of Intent is issued, the Service discovers that an alien appears to be statutorily eligible for relief from deportation, then, pursuant to 8 CFR 242.25(d)(2)(iii), the Service must terminate administrative deportation proceedings and, where appropriate, initiate deportation proceedings under section 242(b) of the Act.

Conversely, if the Service discovers that an alien who has been placed in proceedings before an Immigration Judge in fact is amenable to proceedings under section 242A(b) of the Act, it would implement Congress' intent for the Service to exercise its prosecutorial discretion to move to terminate the Immigration Judge proceedings in order to expedite the deportation process. In such a case, the alien's eligibility for expedited deportation renders the Immigration Judge proceedings unnecessary. Transfer to administrative proceedings in such a case would not be ''forum shopping''; rather, it would simply be a move to a more efficient and appropriate forum, in accord with Congress' intent that administrative proceedings be used for aliens who have committed aggravated felonies and who are not lawful permanent residents. There is, therefore, no reason that the termination of Immigration Judge proceedings should be with prejudice to the Service, particularly since the Immigration Judge will have made no decision on the substantive issues of deportability under section 241 of the Act or relief from deportation. The final rule therefore will remain unchanged.

6. Lack of Administrative Appeal

Comment: A commenter cautioned that execution of Final Administrative Deportation Orders should not be completed without allowing appeal to the Board of Immigration Appeals (''BIA''), to permit an independent review of the evidence by the BIA. This commenter stated that such appeals would not delay deportations because appeals would be completed while the alien is serving his or her sentence. Another commenter stated that, by eliminating any meaningful administrative hearing or review, the regulations will place an added burden on federal courts, which will be forced to decide issues more appropriately resolved on the administrative level.

Response and Disposition: Congress authorized administrative deportation in order to streamline deportation proceedings for a certain class of aliens with respect to whom the decision to deport typically is straightforward and not subject to discretionary or equitable considerations. The rule affords the alien the right to petition for judicial review on limited issues, and such a petition will be entertained by a federal appellate court, which is an independent tribunal with jurisdiction to decide any due process claims properly raised. As noted above, many of the inmates described by the provisions of section 242A(b) of the Act serve short sentences. County and city jail terms of less than a year, and frequently less than six months, are often too short to permit Institutional Hearing Program hearings prior to Service detention of such aliens. This rule permits the Service to serve Notices of Intent to issue a Final Administrative Deportation Order upon short-term inmates and more rapidly adjudicate their cases before the inmates are released from incarceration. The rule

thus prevents costly detention at Service expense and appropriately eliminates a layer of administrative hearings and administrative appeals, which will in turn make it more likely that deportation proceedings will be completed before inmates' release from incarceration. In addition, some aliens convicted of aggravated felonies who have completed their sentences might not be incarcerated when first encountered by the Service. The Service must detain and hold in custody such aliens, at great expense. The rule reduces the length of detention in those cases, as well. Allowing an appeal to the BIA would undermine Congress' intent by recreating the undesirable cost, delay and detention problems that prompted Congress to act in the first instance to permit expedited deportation. Accordingly, the proposed rule remains unchanged.

7. Ensuring That Responses Are Timely Included in Records of Proceeding

Comment: Two commenters expressed concern that, since many offices of the Service are not in a position to process mail received on a timely basis, the Service may not be able to include an alien's timely responses in a record of proceeding in time to prevent the alien from receiving a final order of deportation for failure to timely file a response. The comments stated that, in such a case, the case should be reopened.

Response and Disposition: The rule specifically requires the Service to create and maintain a full record of proceeding in each case. The Notice of Intent will facilitate the matching of responses to the record of proceeding by providing the alien with the contact person to whom the response must be submitted, and an address for that person. Like any other court proceeding, Service personnel will be responsible for matching documents to the record of proceeding for review and adjudication by the deciding Service officer in the district or sector where the charging document was issued.

The deciding Service officer is not precluded from correcting any mistake discovered with respect to the timeliness of receipt of any document, or any other mistake that is pertinent to the final decision. To the contrary, the deciding Service officer may render whatever ruling is deemed appropriate that is supported by the record in carrying out his or her responsibilities as an adjudicator. Furthermore, the integrity of the process in a particular case remains subject to judicial review on a petition for review, based upon the full record of proceeding.

8. Risk of Deporting U.S. Citizens, Permanent Residents, or Other Aliens Ineligible for Deportation or Eligible for Relief From Deportation

Comments: Several commenters stated that the process creates an unacceptable risk of deporting a United States citizen or lawful permanent resident alien. Commenters also questioned the training and expertise of issuing Service officers, arguing that the issues of aggravated felony conviction, derivative citizenship, and relief from deportation are too complex and should be left to an Immigration Judge. One commenter warned that Service officers may initiate expedited proceedings against aliens who have a right to hearings before Immigration Judges or who are citizens and are not aware of it, and the Service will have no incentive to verify derivative citizenship. These commenters even recommended that the Attorney General withdraw the proposed rule for these reasons.

Response and Disposition: As previously stated, Congress authorized administrative deportation for aliens who are aggravated felons and who are not lawful permanent residents. The due process safeguards incorporated in this rule are designed precisely to minimize the risk of an erroneous determination of deportability, while ensuring fairness. As explained above, ''procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions.'' *Mathews,* 424 U.S. at 344. Under this rule, the risk of making an erroneous decision in the generality of cases is minimal. The questions of citizenship, alienage, lawful permanent resident status, conviction for an aggravated felony, and statutory eligibility for relief, are matters that are well within the expertise and competence of Service officers to decide. Indeed, pursuant to other provisions of the Act and other regulations, immigration officers already regularly determine issues germane to deportability, including: whether an alien is finally convicted of an aggravated felony (for purposes of issuing charging documents); acquisition of citizenship at birth; derivation of citizenship; eligibility for adjustment of status or naturalization; and eligibility for any of the forms of relief under the Act. Under current law, district directors are authorized to adjudicate a variety of applications for immigration benefits, including the authority to grant or deny petitions for naturalization.

Because of the straightforward, nondiscretionary nature of the determinations under this rule, there is no reason to believe that United States citizens would face a greater risk of deportation before the deciding Service officer than before an Immigration Judge. If, after the Notice of Intent is issued, an alien appears to be statutorily eligible for relief or raises a genuine issue of material fact regarding the preliminary findings, then the deciding Service officer must either seek additional evidence bearing on the disputed issue, or terminate the administrative deportation proceedings.

9. Typographical and Other Non-Substantive Corrections

Comment: A commenter pointed out that the title for proposed 8 CFR 242.25(d)(iii) does not make sense as it presently reads.

Response and Disposition: The commenter is correct that the word ''Secretary'' in the heading of 8 CFR 242.25(d)(iii) is a typographical error, and should read ''Statutory.'' Accordingly, the word ''Secretary'' is replaced by the word ''Statutory'' in the final rule. The substantive text of the above section, nevertheless, was correct and sufficiently clear to allow for meaningful comment on this provision of the proposed rule. This final rule also makes other non-substantive corrections to the language of the proposed rule.

10. Favorable Comments

Comment: One respondent, a metropolitan Chief of Police, pledged to give this procedure his full support because it is a positive step in dealing with the problems created by criminal undocumented aliens, a growing and dangerous segment of the criminal population.

Response and Disposition: The Service agrees with the commenter that the process under the rule will help combat criminal activity of deportable aliens in many parts of the country, as Congress intended.

Attorney General Certifications

The Attorney General, in accordance with 5 U.S.C. 605(b), certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities.

This rule is not considered to be a ''significant regulatory action'' within the meaning of section 3(f) of E.O. 12866, Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

This rule is not considered to have Federalism implications warranting the

preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

List of Subjects

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. In part 242, a new section 242.25 is added to read as follows:

§ 242.25 Proceedings under section 242A(b) of the Act.

(a) *Definitions.* As used in this section—*Deciding Service officer* means a district director, chief patrol agent, or another immigration officer designated by a district director or chief patrol agent, who is not the same person as the issuing Service officer. *Issuing Service officer* means any Service officer listed in § 242.1(a) as authorized to issue orders to show cause. *Prima facie claim* means a claim that, on its face and consistent with the evidence in the record of proceeding, demonstrates an alien's present statutory eligibility for a specific form of relief from deportation under the Immigration and Nationality Act (''the Act'').

(b) *Preliminary consideration and Notice of Intent to issue a Final Administrative Deportation Order; commencement of proceedings.* (1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon an alien a Notice of Intent to issue a Final Administrative Deportation Order (Notice of Intent, Form I–851), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence;

(iii) Has been convicted (as demonstrated by one or more of the sources listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final;

(iv) Is deportable under section 241(a)(2)(A)(iii) of the Act; and

(v) Does not appear statutorily eligible for any relief from deportation under the Act.

(2) *Notice.* (i) Deportation proceedings under section 242A(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set for the preliminary determinations and inform the alien of the Service's intention to issue a Final Administrative Deportation Order (Final Administrative Deportation Order, Form I–851A) without a hearing before an Immigration Judge. This Notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented by counsel of the alien's choosing, at no expense to the Government, as long as counsel is authorized to practice in deportation proceedings; may inspect the evidence supporting the Notice of Intent; and may rebut the charges within ten (10) calendar days after service of such Notice (or thirteen (13) calendar days if service of the Notice was by mail).

(ii) The Notice of Intent also shall advise the alien that he or she may designate in writing, within ten (10) calendar days of service of the Notice of Intent (or thirteen (13) calendar days if service is by mail), the country to which he or she chooses to be deported in accordance with section 243 of the Act, in the event that a Final Administrative Deportation Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 243 of the Act.

(iii) The Service shall provide the alien with a list of available free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to part 292 of this chapter, located within the district or sector where the Notice of Intent is issued.

(iv) The Service must either provide the alien with a written translation of the Notice of Intent or explain the contents of the Notice of Intent to the alien in the alien's native language or in a language that the alien understands.

(c) *Alien's response.* (1) *Time for response.* The alien will have ten (10) calendar days from service of the Notice of Intent, or thirteen (13) calendar days if service is by mail, to file a response to the Notice. If the final date for filing such a response falls on a Saturday, Sunday, or legal holiday, the response shall be considered due on the next business day. In the response, the alien may: Designate his or her choice of country for deportation; submit a written response rebutting the allegations supporting the charge and/or requesting the opportunity to review the Government's evidence; and/or request in writing an extension of time for response, stating the specific reasons why such an extension is necessary. Alternatively, the alien may, in writing, choose to accept immediate issuance of a Final Administrative Deportation Order. The deciding Service officer may extend the time for response for good cause shown. A request for extension of time for response will not automatically extend the period for the response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien must send the response to the deciding Service officer at the address provided in the Notice of Intent.

(2) *Nature of rebuttal or request to review evidence.* (i) If an alien chooses to rebut the allegations contained in the Notice, the alien's written response must indicate which finding(s) are being challenged and should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge. If the alien asserts that he or she is entitled to statutory relief from deportation, the alien also should include with the response a completed and signed application designed for the relief sought.

(ii) If an alien's written response requests the opportunity to review the Government's evidence, the Service shall serve the alien with a copy of the evidence in the record of proceeding upon which the Service is relying to support the charge. The alien may, within ten (10) calendar days following service of the Government's evidence (thirteen (13) calendar days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. If the alien's final response is a rebuttal of the allegations, such a final response should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge. If the alien asserts that he or she is entitled to statutory relief from deportation, the alien also should include with the final response a completed and signed application designed for the relief sought.

(d) *Determination by deciding Service officer.* (1) *No response submitted or concession of deportability.* If the deciding Service officer does not receive

a timely response and the evidence in the record of processing establishes deportability by clear, convincing, and unequivocal evidence, or if the alien concedes deportability, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order that states the reasons for the deportation decision. The alien may knowingly and voluntarily waive in writing the 30-day waiting period before execution of the final order of deportation provided in paragraph (f) of this section.

(2) *Response submitted.* (i) *Insufficient rebuttal; no prima facie claim or genuine issue of material fact:* If the alien timely submits a rebuttal to the allegations, but the deciding Service officer finds that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, and that the alien has not demonstrated a prima facie claim of eligibility for relief from deportation under the Act, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order that states the reasons for the deportation decision.

(ii) *Additional evidence required.* (A) If the deciding Service officer finds that the record of proceeding, including the alien's timely rebuttal, raises a genuine issue of material fact regarding the preliminary findings, the deciding Service officer may either obtain additional evidence from any source, including the alien, or cause to be issued an order to show cause to initiate deportation proceedings under section 242(b) of the Act. The deciding Service officer also may obtain additional evidence from any source, including the alien, if the deciding Service officer deems that such additional evidence may aid the officer in the rendering of a decision.

(B) If the deciding Service officer considers additional evidence from a source other than the alien, that evidence shall be made a part of the record of proceeding, and shall be provided to the alien. If the alien elects to submit a response to such additional evidence, such response must be filed with the Service within ten (10) calendar days of service of the additional evidence (or thirteen (13) calendar days if service is by mail). If the deciding Service officer finds, after considering all additional evidence, that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, and that the alien does not have a prima facie claim of eligibility for relief from deportation under the Act, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order that states the reasons for the deportation decision.

(iii) *Statutory eligibility for relief; conversion to proceedings under section 242(b) of the Act.* If the deciding Service officer finds that the alien is not amenable to deportation under section 242A(b) of the Act or has presented a prima facie claim of statutory eligibility for a specific form of relief from deportation, the deciding Service officer shall terminate the expedited proceedings under section 242A(b) of the Act, and shall, where appropriate, cause to be issued an order to show cause for the purpose of initiating an Immigration Judge proceeding under section 242(b) of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 242A(b) of the Act, in accordance with this section.

(e) *Proceedings commenced under section 242(b) of the act.* In any proceeding commenced under section 242(b) of the Act, if it appears that the respondent alien is subject to deportation pursuant to section 242A(b) of the Act, the Immigration Judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 242A(b) of the Act. However, in the absence of any such request, the Immigration Judge shall complete the pending proceeding commenced under section 242(b) of the Act.

(f) *Executing final deportation order of deciding Service officer.* (1) *Time of execution.* Upon the issuance of a Final Administrative Deportation Order, the Service shall issue a warrant of deportation in accordance with 8 CFR 243.2; such warrant shall be executed no sooner than 30 calendar days after the date the Final Administrative Deportation Order is issued, unless the alien knowingly, voluntarily and in writing waives the 30-day period. The 72-hour provisions of § 243.3(b) of this chapter shall not apply.

(2) *Country to which alien is to be deported.* The deciding Service officer shall designate the country of deportation in the manner prescribed by section 243(a) of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a warrant of deportation, the alien may be arrested and taken into custody under the authority of a warrant of arrest issued by an officer listed in § 242.2(c)(1) of this chapter. Pursuant to section 242(a)(2)(A) of the Act, the deciding Service officer shall not release an alien who has not been lawfully admitted. Pursuant to section 242(a)(2)(B) of the Act, the deciding Service officer may release an alien who has been lawfully admitted if, in accordance with § 242.2(h) of this chapter, the alien demonstrates that he or she is not a threat to the community and is likely to appear at any scheduled hearings. The decision of the deciding Service officer concerning custody or bond shall not be administratively appealable during proceedings initiated under section 242A(b) of the Act and this section.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Deportation Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Deportation Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability or relief from deportation.

PART 299—IMMIGRATION FORMS

3. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

4. Section 299.1 is amended by adding the entries for Forms ''I–851'' and ''I–851A'' to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–851	04–06–95	Notice of Intent to Issue Final Administrative Deportation Order.
I–851A	04–06–95	Final Administrative Deportation Order.
*	*	* * *

Dated: August 17, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–20946 Filed 8–23–95; 8:45 am]

BILLING CODE 4410–01–M